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## SECTION 200.00 - NEPA PROCESS OVERVIEW

### SECTION 210.00 - OVERVIEW

Sections 200 describe the environmental review procedures that currently occur primarily during the design phase of ITD projects. Detailed guidance is given for the major steps in the environmental review process. Section 200 focuses on:

- Understanding NEPA legislative authority, agency roles and responsibilities.
- Defining and illustrating the NEPA review process for the three major project classifications.
- **Section 311** gives detailed guidance on the documents and procedures for each classification

Environmental analysis is done to some degree at each stage of project development. The first analysis occurs during project definition, with preparation of the ITD Form 0280 (See FormFinder) as part of the Concept Report. The most extensive analysis occurs during project design for the purpose of preparing environmental documents (e.g., environmental evaluations with the ITD Form 654, environmental assessments, EISs) and permit applications. **Sections 600** through **Section 2200** give specific guidance for analysis of each of the environmental elements required by federal and state laws and regulations.

**210.01 Abbreviations and Acronyms.** Abbreviations and acronyms used in **Section 200** are listed below. Others are found in the general list in the appendix.

CE	Categorical Exclusion (NEPA)
CEQ	Council on Environmental Quality (federal)
CFR	Code of Federal Regulations
DEIS	Draft Environmental Impact Statement
EA	Environmental Assessment
ECS	Environmental Classification Summary
EIS	Environmental Impact Statement
FEIS	Final Environmental Impact Statement
FONSI	Finding of No Significant Impact (NEPA)
GIS	Geographic Information System
NEPA	National Environmental Policy Act
NOI	Notice of Intent (NEPA)
ROD	Record of Decision (NEPA)

## 210.02 Glossary.

***Categorical Exclusion*** – This is an action that does not individually or cumulatively have a significant environmental effect, as defined in NEPA regulations, and is classified as excluded (NEPA) from requirements to prepare an Environmental Assessment or Environmental Impact Statement.

***Council on Environmental Quality (CEQ)*** – An oversight council established within the Executive Office of the President with passage of the National Environmental Policy Act of 1969. The Council has been assigned the task of ensuring that federal agencies meet their obligations under NEPA. Its role is to advise and assist the President on environmental policy development; recommend strategies and oversee implementation; report, coordinate, support, interpret, and approve procedures; and issue guidance. Regulations are codified as 40 CFR 1500-1508.

***Cumulative Impact/Effect*** – Cumulative impacts from past actions or the incremental effect of the proposed action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over time. For NEPA, see 40 CFR 1508.7. ([See Section 360 for guidance.](#))

***Direct Impact/Effect*** – A direct impact (or effect) is caused by the proposed action or alternative and occurs at the same time and place, most often during construction. Impacts may be ecological, aesthetic, historic, cultural, economic, social, or health-related. For example, a highway crossing a stream may directly impact its water quality, though such impacts can be mitigated. For NEPA, see 40 CFR 1508.8.

***Discipline Report*** – A report prepared by District Offices to document environmental studies and investigations. The discipline reports form the basis of the NEPA Document, Categorical Exclusion or other environmental documents.

***Environmental Document*** – Includes Environmental Assessments (NEPA), and Final EISs, Section 4(f) Evaluations, Section 106 Reports, and other documents prepared in response to state or federal environmental requirements. A Categorical Exclusion is not a NEPA document it is a determination of degree of impact. An Environmental Evaluation for a Categorical Exclusion is often referred to as a “Cat. Ex. Document”, although this is not technically correct since only EAs and EISs are correctly called “documents” under NEPA.

***Environmental Review*** – Consideration of environmental factors as required by NEPA. The “environmental review process” is the procedure used by agencies and others to give appropriate consideration to the environment in decision making.

***Indirect Impact/Effect*** – (*Sometimes used interchangeably with “secondary impact/effect”*) Indirect impacts (or effects) are caused by the proposed action or alternative and are later in time or farther removed in distance, but still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems. For example, a road project may shift existing or projected housing growth into a different area of a region. The growth was happening already, but “indirectly” the road project influenced where it took place. (Note: “Indirect” is defined somewhat differently under NEPA and ESA rules). For NEPA, see 40 CFR 1508.8.

**Mitigation** – (1) Avoiding the impact altogether by not taking a certain action or parts of an action, (2) minimizing impacts by limiting the degree of the action, (3) rectifying the impact by repairing or enhancing the affected environment, (4) reducing or eliminating the impact over time, (5) compensating for the impact by replacing or substituting resources or environment, or (6) monitoring the impact and taking appropriate corrective measures. For NEPA, see 40 CFR 1508.2.

**Project Description** – A narrative to describe the project proposal and the project area. It may include explanations of the existing physical, environmental, social, and economic setting in which the proposed project is situated, a legal description of the location, an explanation of the intended improvements and but is primarily the process and equipment used for the construction of the project.

**Responsible Official** – Official of the lead agency who has been delegated responsibility for complying with NEPA procedures. For most ITD projects, the Responsible Official is the Headquarters Environmental Section Manager.

**Scoping** – Formal scoping for an EIS includes identifying the range of proposed actions, alternatives, environmental elements and impacts, and mitigation measures to be analyzed in an environmental document. Public and agency scoping meetings are generally associated with this activity for NEPA scoping activities.

**Secondary Effect/Impact** – The same as indirect effect under NEPA.

**Significant Impact** – The significance of potential change on the natural or built (cultural) environment depends upon context, setting, likelihood of occurrence and severity, intensity, magnitude, or duration of the impact. Determining the “significance” of an impact is not defined in black and white. It is based on past experience of the person preparing the document and is influenced by court interpretations. Ultimately, the definition may rest with the legal system if the document is challenged. ITD and FHWA practice is to not use the word “significant” in an environmental document unless the document is referring to a 4(f) or Section 106 resource, quoting a regulation or statute or the impact being described is supportably significant under law. Use a synonym such as substantial, primary, major, or high level unless the impact is truly significant.

## **SECTION 220.00 - NEPA LEGISLATION AND IMPLEMENTING REGULATIONS**

President Nixon signed The National Environmental Policy Act (NEPA, Public Law 91-190) in January 1970 as the “national charter for protection of the environment” (40 CFR Part 1500.1). It was enacted to ensure that information on the environmental impacts of any federal action is available to public officials and citizens before decisions are made and before actions are taken.

The intention of NEPA was stated as follows: **“Ultimately, of course, it is not better documents but better decisions that count. NEPA’s purpose is not to generate paperwork – even excellent paperwork – but to foster excellent action.”** The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. These regulations provide the direction to achieve this purpose.” [40 CFR1500.1(c)].

Under NEPA, the Congress directs federal agencies to integrate in their planning and decision making consideration of the natural and social sciences, environmental amenities and values, and design arts along with economic and technical concerns. NEPA is a broad-reaching mandate for federal agencies to work together with state, local, and tribal governments, public and private organizations, and the public, to achieve and balance national social, economic, and environmental goals while accomplishing their missions.

Federal agencies are required to integrate the NEPA process with other planning organizations at the earliest possible time to ensure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts.

NEPA implementing regulations applicable to all federally aided projects were developed by the Council on Environmental Quality (CEQ) and are codified as 40 CFR 1500 – 1508, Regulations for Implementing the Procedural Provisions of NEPA. FHWA regulations applicable to federally aided highway projects are codified as 23 CFR 771, Environmental Impact and Related Procedures.

The full text of NEPA (42 USC 4321-4347), CEQ implementing regulations (40 CFR 1500-1508), and other guidance is online at: [http://ceq.eh.doe.gov/nepa/regs/ceq/toc\\_ceq.htm](http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm); environmental impact and related regulations (23 CFR 771) are at: <http://www.fhwa.dot.gov/>

For FHWA policy and other guidance on Transportation Project Development and NEPA: <http://www.fhwa.dot.gov/>.

FHWA's Technical Advisory, Guidance for Preparing and Processing Environmental and Section 4(f) Documents, (T6640.8A, October 30, 1987) is at [Section 300-4](#) or: <http://www.fhwa.dot.gov/>.

FHWA has other useful information at: <http://www.fhwa.dot.gov/>.

## **SECTION 230.00 - AGENCY ROLES AND RESPONSIBILITIES**

**230.01 General.** Depending on the project, a federal, state, or local agency may serve in any of the roles described below.

**230.01.01 Lead Agency.** The Lead Agency is responsible for ensuring NEPA requirements are met. For State of Idaho transportation projects, ITD is the lead agency and FHWA is the lead agency for Federal (23 CFR 771.109) projects. Although FHWA is the NEPA lead agency for federal highway projects, NEPA allows the environmental document to be prepared by the state transportation agency so long as FHWA provides guidance and independently evaluates the document (42 USC 4332(2)(D)). FHWA and ITD also may decide to be joint lead agencies for NEPA. The lead agency appoints a Responsible Official to sign off on environmental documents. For ITD projects this is usually the Headquarters Environmental Section Manager.

**230.01.02 Applicant.** Under the NEPA Rules, ITD is an applicant as the agency that initiates a project to FHWA, which has approval authority. The applicant may do the actual work of preparing environmental documentation, which must be approved by the lead agency before release to the public.

**230.01.03 Cooperating Agency.** According to CEQ 40 CFR 1508.5, “cooperating agency” means any Federal agency, other than a lead agency, that has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposed project or project alternative. A State or local agency of similar qualifications or, when the effects are on lands of tribal interest, a Native American tribe may, by agreement with the lead agencies, also become a cooperating agency. Cooperating agencies are signatories on the environmental documents.

**230.01.04 Participating Agency.** Participating agencies are those with an interest in the project. The standard for participating agency status is more encompassing than the standard for cooperating agency status described above. Therefore, cooperating agencies are, by definition, participating agencies, but not all participating agencies are cooperating agencies. The lead agencies should consider the distinctions noted below in deciding whether to invite an agency to serve as a cooperating/participating agency or only as a participating agency.

**230.01.05 Agency Roles and Responsibilities.** The roles and responsibilities of cooperating and participating agencies are similar, but cooperating agencies have a higher degree of authority, responsibility and involvement in the environmental review process. A distinguishing feature of a cooperating agency is that the CEQ regulations (40 CFR Section 1501.6) permit a cooperating agency to “assume on request of the lead agency responsibility for developing information and preparing environmental analysis, including portions of the environmental impact statement, concerning which the cooperating agency has special expertise.” An additional distinction is that, pursuant to 40 CFR 1506.3, “a cooperating agency may not adopt without recirculating the environmental impact statement of a lead agency when, after an independent review of the statement, the cooperating agency concludes that its comments and suggestions have been satisfied.” This provision is particularly important to permitting agencies, such as the U.S. Army Corps of Engineers, who as cooperating agencies, routinely adopt USDOT environmental documents.

**230.02 FHWA and Other Federal Oversight Agencies.** FHWA is the lead agency under NEPA as the federal agency responsible for funding and approving federal transportation projects. FHWA directly funds most ITD projects and funds many local government projects through ITD. Federal DOT lead agencies for other transportation modes are:

<i>Mass transit</i> –	Federal Transit Administration (FTA).
<i>Aviation</i> –	Federal Aviation Administration (FAA).
<i>Navigable waters</i> –	United States Coast Guard (USCG).
<i>Rail</i> –	Federal Railroad Administration (FRA).

These agencies may have different regulations to implement NEPA, so advance coordination (early and often) is imperative when developing environmental documents with co-lead federal agencies. For example, the FTA does not recognize programmatic 4(f) statements unless it adopts the FHWA policy on this issue on an individual project basis.

**230.03 Local Highway Technical Advisory Council (LHTAC).** The LHTAC oversees the pass-through of federal funds from FHWA and other federal sources to cities counties and other public agencies, with the exception of Native American Tribes. Currently, tribes are restricted from LHTAC funding. Prior to FHWA. For more detail on LHTAC procedures see [Section 400](#).

**230.04 ITD Offices.** Districts in ITD are six geographical areas of several counties each bounded by county boundaries. The six individual ITD District Offices, with support from HQ Environmental Section, represent ITD as the lead agency and NEPA applicant for federally funded highway projects within their boundaries. The HQ Environmental Section reviews NEPA documents

before they are submitted to FHWA or other federal oversight agency. The District office may also be lead agency for non-ITD projects proposed on state right-of-way. The District Engineer is the Responsible Official for State-only projects. For more detail on State-only projects see [Section 400](#).

**230.05 ITD Divisions.** For aviation, and rail projects, the sponsoring ITD division generally acts as its own lead agency or applicant. For example, the Division of Aeronautics is lead agency for a proposal to rebuild a terminal or an air strip. ITD divisions may choose to have the Environmental Section Office act as lead agency because of its experience with NEPA procedures.

**230.06 DEQ.** DEQ is the implementing agency in the state for EPA water quality issues such as TMDL and 401 water quality certification.

**230.07 Local Governments** For local government transportation projects receiving federal aid, cities, counties, and special projects such as sewer, water and school construction are in the role of “proponent.” ITD serves as the co-lead agency with FHWA for NEPA purposes, through its Highways and Local Programs. Local projects involving federal permits, federal lands, or federal funding are also categorized Class I, II, or III. Whether or not federal funds are involved, local governments are generally the lead agency.

## SECTION 240.00 – PROJECT CLASSIFICATIONS

Projects are classified for environmental review purposes during the project definition phase. This process is documented using ITD’s 654 Form. [Sections 330.00/340.00/350.00](#) contain a detailed description of the classification system and examples of projects falling into each class. Briefly, Class I projects require an EIS; Class II projects are Categorically Excluded (CE) from NEPA EIS requirements; and Class III projects require an Environmental Assessment (EA) and accompanying Environmental Checklist to determine whether significant impacts are likely (23 CFR 771.115).

## SECTION 250.00 – EXHIBITS

Exhibit 200-1

### NEPA's Forty Most Asked Questions

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1. [Range of Alternatives.](#)
2. [Alternatives Outside the Capability of Applicant or Jurisdiction of Agency.](#)
3. [No-Action Alternative.](#)
4. [Agency's Preferred Alternative.](#)
5. [Proposed Action v. Preferred Alternative.](#)
6. [Environmentally Preferable Alternative.](#)
7. [Difference Between Sections of EIS on Alternatives and Environmental Consequences.](#)
8. [Early Application of NEPA.](#)
9. [Applicant Who Needs Other Permits.](#)
10. [Limitations on Action During 30-Day Review Period for Final EIS.](#)
11. [Limitations on Actions by an Applicant During EIS Process.](#)
12. [Effective Date and Enforceability of the Regulations.](#)
13. [Use of Scoping Before Notice of Intent to Prepare EIS.](#)
14. [Rights and Responsibilities of Lead and Cooperating Agencies.](#)

15. Commenting Responsibilities of EPA.
16. Third Party Contracts.
17. Disclosure Statement to Avoid Conflict of Interest.
18. Uncertainties About Indirect Effects of A Proposal.
19. Mitigation Measures.
20. Worst Case Analysis. [Withdrawn.]
21. Combining Environmental and Planning Documents.
22. State and Federal Agencies as Joint Lead Agencies.
23. Conflicts of Federal Proposal With Land Use Plans, Policies or Controls.
24. Environmental Impact Statements on Policies, Plans or Programs.
25. Appendices and Incorporation by Reference.
26. Index and Keyword Index in EISs.
27. List of Preparers.
28. Advance or Xerox Copies of EIS.
29. Responses to Comments.
30. Adoption of EISs.
31. Application of Regulations to Independent Regulatory Agencies.
32. Supplements to Old EISs.
33. Referrals.
34. Records of Decision.
35. Time Required for the NEPA Process.
36. Environmental Assessments (EA).
37. Findings of No Significant Impact (FONSI).
38. Public Availability of EAs v. FONSI.
39. Mitigation Measures Imposed in EAs and FONSI.
40. Propriety of Issuing EA When Mitigation Reduces Impacts.

## END NOTES

### ***Exhibit 200-2 -CEQ - Regulations for Implementing NEPA***

#### **Part 1500 -** Purpose, Policy, and Mandate

- 1500.1 Purpose.
- 1500.2 Policy.
- 1500.3 Mandate.
- 1500.4 Reducing paperwork.
- 1500.5 Reducing delay.
- 1500.6 Agency authority.

#### **Part 1501 -** NEPA and Agency Planning

- 1501.1 Purpose.
- 1501.2 Apply NEPA early in the process.
- 1501.3 When to prepare an environmental assessment.
- 1501.4 Whether to prepare an environmental impact statement.
- 1501.5 Lead agencies.
- 1501.6 Cooperating agencies.
- 1501.7 Scoping.
- 1501.8 Time limits.

#### **Part 1502 -** Environmental Impact Statement

- 1502.1 Purpose.



- 1502.2 Implementation.
- 1502.3 Statutory requirements for statements.
- 1502.4 Major Federal actions requiring the preparation of environmental impact statements.
- 1502.5 Timing.
- 1502.6 Interdisciplinary preparation.
- 1502.7 Page limits.
- 1502.8 Writing.
- 1502.9 Draft, final, and supplemental statements.
- 1502.10 Recommended format.
- 1502.11 Cover sheet.
- 1502.12 Summary.
- 1502.13 Purpose and need.
- 1502.14 Alternatives including the proposed action.
- 1502.15 Affected environment.
- 1502.16 Environmental consequences.
- 1502.17 List of preparers.
- 1502.18 Appendix.
- 1502.19 Circulation of the environmental impact statement.
- 1502.20 Tiering.
- 1502.21 Incorporation by reference.
- 1502.22 Incomplete or unavailable information.
- 1502.23 Cost-benefit analysis.
- 1502.24 Methodology and scientific accuracy.
- 1502.25 Environmental review and consultation requirements.

#### **Part 1503 -**           Commenting

- 1503.1 Inviting comments.
- 1503.2 Duty to comment.
- 1503.3 Specificity of comments.
- 1503.4 Response to comments.

#### **Part 1504 -**           Predecision Referrals to the Council of Proposed Federal Actions Determined to be Environmentally Unsatisfactory

- 1504.1 Purpose.
- 1504.2 Criteria for referral.
- 1504.3 Procedure for referrals and response.

#### **Part 1505 -**           NEPA and Agency Decision making

- 1505.1 Agency decision making procedures.
- 1505.2 Record of decision in cases requiring environmental impact statements.
- 1505.3 Implementing the decision.

#### **Part 1506 -**           Other Requirements of NEPA

- 1506.1 Limitations on actions during NEPA process.
- 1506.2 Elimination of duplication with State and local procedures.
- 1506.3 Adoption.
- 1506.4 Combining documents.
- 1506.5 Agency responsibility.
- 1506.6 Public involvement.

- 1506.7 Further guidance.
- 1506.8 Proposals for legislation.
- 1506.9 Filing requirements.
- 1506.10 Timing of agency action.
- 1506.11 Emergencies.
- 1506.12 Effective date.

## **Part 1507 - Agency Compliance**

- 1507.1 Compliance.
- 1507.2 Agency capability to comply.
- 1507.3 Agency procedures.

## **Part 1508 - Terminology and Index**

- 1508.1 Terminology.
- 1508.2 Act.
- 1508.3 Affecting.
- 1508.4 Categorical exclusion.
- 1508.5 Cooperating agency.
- 1508.6 Council.
- 1508.7 Cumulative impact.
- 1508.8 Effects.
- 1508.9 Environmental assessment.
- 1508.10 Environmental document.
- 1508.11 Environmental impact statement.
- 1508.12 Federal agency.
- 1508.13 Finding of no significant impact.
- 1508.14 Human environment.
- 1508.15 Jurisdiction by law.
- 1508.16 Lead agency.
- 1508.17 Legislation.
- 1508.18 Major Federal action.
- 1508.19 Matter.
- 1508.20 Mitigation.
- 1508.21 NEPA process.
- 1508.22 Notice of intent.
- 1508.23 Proposal.
- 1508.24 Referring agency.
- 1508.25 Scope.
- 1508.26 Special expertise.
- 1508.27 Significantly.
- 1508.28 Tiering.

## **Appendices NEPA Implementation Procedures; Appendices I, II, and III**

(49 Fed. Reg. 49750, December 21, 1984)

**Note:** Particular contacts may in some instances be outdated.

- Appendix I - [Federal and Federal-State Agency National Environmental Policy Act Contacts](#)
- Appendix II - [Federal and Federal-State Agencies with Jurisdiction by Law or Special Expertise on Environmental Quality Issues](#)
- Appendix III - [Federal and Federal-State Agency Offices for Receiving and Commenting on Other Agencies' Environmental Documents](#)

